

109TH CONGRESS
2D SESSION

S. 3888

To amend title XVIII of the Social Security Act to sunset the sustainable growth rate formula as of January 1, 2009, in order to expedite Congressional action in establishing a new physician payment system that would appropriately reimburse physicians by keeping pace with increases in medical practice costs and providing stable, positive Medicare updates.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2006

Ms. STABENOW introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to sunset the sustainable growth rate formula as of January 1, 2009, in order to expedite Congressional action in establishing a new physician payment system that would appropriately reimburse physicians by keeping pace with increases in medical practice costs and providing stable, positive Medicare updates.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fix And Improve Re-
5 imbursement (FAIR) for Physicians Act of 2006”.

1 **SEC. 2. FINDINGS; PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The Medicare sustainable growth rate
5 (SGR) formula, used in establishing payment rates
6 under the physician fee schedule under the Medicare
7 program, resulted in significant payment cuts to
8 physicians and health care professionals in 2002.

9 (2) The Medicare SGR formula would have re-
10 sulted in payment cuts to physicians and health care
11 professionals in 2003, 2004, 2005, and 2006 had
12 Congress not intervened.

13 (3) The Medicare SGR formula will result in a
14 5 percent payment cut to physicians and health care
15 professionals effective January 1, 2007.

16 (4) According to the Medicare Payment Advi-
17 sory Commission (MedPAC) and the Board of
18 Trustees of the Federal Hospital Insurance Trust
19 Fund and the Federal Supplementary Medical In-
20 surance Trust Fund, the Medicare SGR formula will
21 result in substantial payment cuts to physicians and
22 health care professionals through at least 2015.

23 (5) MedPAC does not support the impending
24 payment cuts described in paragraphs (3) and (4)
25 and is concerned that such consecutive annual pay-

1 ment cuts would threaten access to physician serv-
2 ices over time, particularly primary care services.

3 (6) MedPAC has raised concerns over current
4 payment policies that may discourage medical stu-
5 dents and residents from becoming primary care
6 physicians because many Medicare beneficiaries rely
7 on primary care providers for important health care
8 management.

9 (7) According to a 2006 American Medical As-
10 sociation survey, if payment cuts to physicians under
11 the Medicare program go into effect, 45 percent of
12 physicians plan to decrease the number of new Medi-
13 care patients they accept, 50 percent of physicians
14 plan to defer the purchase of information tech-
15 nology, 37 percent of physicians who treat patients
16 living in rural communities will discontinue rural
17 outreach services, and 43 percent of physicians will
18 decrease the number of new TRICARE patients they
19 accept.

20 (8) MedPAC, who considers the Medicare SGR
21 formula a flawed, inequitable mechanism for control-
22 ling the volume of services, first recommended repeal
23 of the Medicare SGR formula in 2001 and since
24 then has consistently recommended repealing the
25 formula.

1 (9) Annual actions by Congress to override the
2 Medicare SGR formula result in instability and un-
3 predictability for physicians, health care profes-
4 sionals, seniors, and individuals with disabilities.

5 (10) Annual actions by Congress to override the
6 Medicare SGR formula do not solve the long-term
7 problem as the formula extracts the added spending
8 in future years by imposing ever more drastic cuts.

9 (11) Stable, positive updates under the Medi-
10 care physician fee schedule that accurately reflect
11 medical practice cost increases are vital for encour-
12 aging and economically supporting physicians' ability
13 to make the significant financial investment required
14 for health information technology and participation
15 in quality improvement programs.

16 (12) A stable payment system for physicians is
17 critical to preserve Medicare beneficiaries' access to
18 high-quality health care.

19 (13) Adopting MedPAC's recommendation to
20 update payments for physicians' services under the
21 Medicare program in 2007 and 2008 by the pro-
22 jected change in input prices less MedPAC's expecta-
23 tion for productivity growth is necessary to allow
24 M.D.s, D.O.s, and health care professionals to con-
25 tinue to provide access to high-quality Medicare

1 services for all Medicare beneficiaries while giving
2 Congress time to develop an alternative payment
3 system that accurately reflects the costs of providing
4 care to Medicare beneficiaries

5 (b) PURPOSE.—The purpose of this Act is to sunset
6 the Medicare sustainable growth rate formula as of Janu-
7 ary 1, 2009, in order to expedite Congressional action in
8 establishing a new physician payment system under the
9 Medicare program that would appropriately reimburse
10 physicians by keeping pace with increases in medical prac-
11 tice costs and providing stable, positive Medicare updates.

12 **SEC. 3. SUNSET OF MEDICARE SUSTAINABLE GROWTH**
13 **RATE FORMULA.**

14 (a) IN GENERAL.—Subsection (f) of section 1848 of
15 the Social Security Act (42 U.S.C. 1395w–4) is repealed.

16 (b) EFFECTIVE DATE.—The repeal made by sub-
17 section (a) shall apply to services furnished on or after
18 January 1, 2009.

19 **SEC. 4. ESTABLISHMENT OF PHYSICIAN PAYMENT UPDATE**
20 **COMMISSION.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—There is established a com-
23 mission to be known as the “Physician Payment Up-
24 date Commission” (referred to in this section as the
25 “Commission”).

1 (2) MEMBERSHIP.—

2 (A) COMPOSITION.—The Commission shall
3 be composed of 17 members appointed by the
4 Comptroller General of the United States, upon
5 the recommendation of the Majority and Minor-
6 ity Leaders of the Senate.

7 (B) DATE OF APPOINTMENTS.—Members
8 of the Commission shall be appointed not later
9 than 3 months after the date of enactment of
10 this Act.

11 (3) QUALIFICATIONS.—

12 (A) IN GENERAL.—The membership of the
13 Commission shall include individuals with na-
14 tional recognition for their expertise in health
15 finance and economics, actuarial science, inte-
16 grated delivery systems, allopathic and osteo-
17 pathic medicine and other areas of health serv-
18 ices, and other related fields, who provide a mix
19 of different professionals, broad geographic rep-
20 resentation, and a balance between urban and
21 rural representatives.

22 (B) INCLUSION.—The members of the
23 Commission shall include (but not be limited to)
24 physicians and other health professionals, em-
25 ployers, third-party payers, individuals skilled

1 in the conduct and interpretation of biomedical,
2 health services, and health economics research
3 and technology assessment. Such membership
4 shall also include representatives of consumers
5 and the elderly.

6 (C) MAJORITY PHYSICIANS AND OTHER
7 HEALTH PROFESSIONALS.—Individuals who are
8 physicians or other health professionals shall
9 constitute a majority of the membership of the
10 Commission.

11 (4) TERM; VACANCIES.—

12 (A) TERM.—A member shall be appointed
13 for the life of the Commission.

14 (B) VACANCIES.—A vacancy on the Com-
15 mission—

16 (i) shall not affect the powers of the
17 Commission; and

18 (ii) shall be filled in the same manner
19 as the original appointment was made.

20 (5) MEETINGS.—The Commission shall meet at
21 the call of the Chairperson.

22 (6) QUORUM.—A majority of the members of
23 the Commission shall constitute a quorum, but a
24 lesser number of members may hold hearings.

1 (7) CHAIRPERSON.—The Comptroller General
2 shall designate a member of the Commission, at the
3 time of the appointment of the member, as Chair-
4 person.

5 (b) DUTIES.—

6 (1) STUDY.—The Commission shall conduct a
7 study of all matters relating to payment rates under
8 the Medicare physician fee schedule under section
9 1848 of the Social Security Act (42 U.S.C. 1395w–
10 4).

11 (2) RECOMMENDATIONS.—The Commission
12 shall develop recommendations on the establishment
13 of a new physician payment system under the Medi-
14 care program that would appropriately reimburse
15 physicians by keeping pace with increases in medical
16 practice costs and providing stable, positive Medicare
17 updates.

18 (3) REPORT.—Not later than December 1,
19 2007, the Commission shall submit to the appro-
20 priate Committees of Congress and the Medicare
21 Payment Advisory Commission—

22 (A) a detailed statement of the findings
23 and conclusions of the Commission; and

1 (B) the recommendations of the Commis-
2 sion for such legislation and administrative ac-
3 tions as the Commission considers appropriate.

4 (c) POWERS.—

5 (1) HEARINGS.—The Commission may hold
6 such hearings, meet and act at such times and
7 places, take such testimony, and receive such evi-
8 dence as the Commission considers advisable to
9 carry out this section.

10 (2) INFORMATION FROM FEDERAL AGENCIES.—

11 (A) IN GENERAL.—The Commission may
12 secure directly from a Federal agency such in-
13 formation as the Commission considers nec-
14 essary to carry out this section.

15 (B) PROVISION OF INFORMATION.—On re-
16 quest of the Chairperson of the Commission,
17 the head of the agency shall provide the infor-
18 mation to the Commission.

19 (3) POSTAL SERVICES.—The Commission may
20 use the United States mails in the same manner and
21 under the same conditions as other agencies of the
22 Federal Government.

23 (d) COMMISSION PERSONNEL MATTERS.—

24 (1) COMPENSATION OF MEMBERS.—

1 (A) IN GENERAL.—Members of the Com-
2 mission shall serve without compensation in ad-
3 dition to the compensation received for the serv-
4 ices of the member as an officer or employee of
5 the Federal Government.

6 (B) TRAVEL EXPENSES.—A member of the
7 Commission shall be allowed travel expenses, in-
8 cluding per diem in lieu of subsistence, at rates
9 authorized for an employee of an agency under
10 subchapter I of chapter 57 of title 5, United
11 States Code, while away from the home or reg-
12 ular place of business of the member in the per-
13 formance of the duties of the Commission.

14 (2) STAFF AND SUPPORT SERVICES.—

15 (A) EXECUTIVE DIRECTOR.—The Chair-
16 person shall appoint an executive director of the
17 Commission.

18 (B) STAFF.—With the approval of the
19 Commission, the executive director may appoint
20 such personnel as the executive director con-
21 siders appropriate.

22 (C) APPLICABILITY OF CIVIL SERVICE
23 LAWS.—The staff of the Commission shall be
24 appointed without regard to the provisions of
25 title 5, United States Code, governing appoint-

ments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates.

(D) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(e) TERMINATION OF COMMISSION.—The Commission shall terminate 30 days after the date on which the Commission submits the report of the Commission under subsection (b)(3).

(f) REVIEW AND RESPONSE TO RECOMMENDATIONS BY THE MEDICARE PAYMENT ADVISORY COMMISSION.—

(1) IN GENERAL.—Not later than January 1, 2008, the Medicare Payment Advisory Commission shall—

(A) review the recommendations included in the report submitted under subsection (b)(3); and

(B) submit to the appropriate Committees of Congress a report on such review.

1 (2) CONTENTS OF REPORT ON REVIEW OF COM-
2 MISSION RECOMMENDATIONS.—The report sub-
3 mitted under paragraph (1)(B) shall include the fol-
4 lowing:

5 (A) If the Medicare Payment Advisory
6 Commission supports such recommendations,
7 the reasons for such support; or

8 (B) If the Medicare Payment Advisory
9 Commission does not support such rec-
10 ommendations, the recommendations of the
11 Medicare Payment Advisory Commission, to-
12 gether with an explanation as to why the Medi-
13 care Payment Advisory Commission does not
14 support the recommendations of the Commis-
15 sion.

16 (g) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 necessary to carry out this section. Such appropriation
19 shall be payable from the Federal Supplementary Medical
20 Insurance Trust Fund under section 1841 of the Social
21 Security Act (42 U.S.C. 1395t).

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